BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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BB's Deli, LLC, Complainant, vs. San Diego Gas & Electric Company (U902M), Defendant.	**Case No. C.16-04-009** (Filed April 12, 2016)

ANSWER OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-M) TO COMPLAINT OF BB'S DELI, LLC

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Pursuant to Rule 4.4 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and Chief Administrative Law Judge Clopton's Instructions to Answer Notice ("IAN"), dated April 28, 2016, Defendant San Diego Gas & Electric Company ("SDG&E") hereby files its Answer in the above-captioned proceeding.

I. INTRODUCTION AND ISSUE PRESENTED

The Complainant, BB's Deli, LLC ("Complainant"), seeks rate refunds from the Commission on the theory that it had no notice of Rate Schedule A, and that Complainant would have changed to Rate Schedule A (from Rate Schedule A-TOU) as of 2009, had Complainant known about Rate Schedule A. The Complaint has no merit.

Complainant knew about Rate Schedule A. Indeed, Complainant was on Rate Schedule A until early 2000, at which time Complainant asked SDG&E to move Complainant to Rate Schedule A-TOU.

At any time since 2000, Complainant could have inquired about its bills and revisited the relative benefits of Rate Schedule A and Rate Schedule A-TOU. Complainant simply chose not to do so. Accordingly, this matter is barred by Section 736 of the Public Utilities Code.

Even if not barred, Complainant's claim must fail. Complainant theorizes that SDG&E had a "continuing obligation" to send a notification to Complainant by mail every time SDG&E adjusted its existing rates. Complainant argues that had SDG&E done so, Complainant would have switched to Rate Schedule A. Complainant's legal argument is premised on Tariff Rule 12. But the notice requirement in Tariff Rule 12 applies only when SDG&E adopts new or optional rates, not when SDG&E revises existing rates. SDG&E believes that Complainant is relying on old tariffs and law, which were superseded by the Commission's General Order 96-B.

Also, Complainant cannot meet its burden to prove that Complainant would have moved to Rate Schedule A prior to 2014, if SDG&E had provided special notices to Complainant. Rate Schedule A was not inherently superior to Rate Schedule A-TOU over the period from January 2009 through July of 2014. The two rate schedules were not "apples to apples." Rate Schedule A was a flat rate that applied regardless of the time when Complainant used energy. Rate Schedule A-TOU, in contrast, had different prices for different time periods, and thus produced differing results based on the Complainant's load profile for the month. When presented with these two options in 2000, Complainant chose Rate Schedule A-TOU.

Moreover, with hindsight, we now know that, for the January 2009-July 2014 period, the rate schedules produced very similar results as applied to Complainant's load profile. The delta over the 4.5-year period proposed by Complainant was approximately a mere 2%. Indeed, there were many months over Complainant's proposed 4.5-year period in which Rate Schedule A-TOU produced lower bills for Complainant than Rate Schedule A. This demonstrates that

Complainant could have used energy in a manner that would have caused Rate Schedule A-TOU to produce lower bills than Rate Schedule A over that time period.

SDG&E is planning to file a Motion for Summary Judgment. The issue presented involves a question of tariff interpretation, which can be decided as a matter of law.

II. OTHER RULE 4.4 REQUIREMENTS

Complainant seeks hearings under a "regular complaint schedule." Complainant states that this is not an expedited-complaint proceeding. *See* Complaint at 16. Complainant asks for a prehearing conference within 30 days of its Complaint and a hearing within 60-70 days following the Complaint. This schedule overlooks SDG&E's right to file an Answer and the potential for motions that will render hearings moot. Accordingly, SDG&E provides an alternative schedule below.

A. Procedural Matters

- Category – Chief ALJ Clopton's IAN proposes to categorize the case as adjudicatory. That is unnecessary if the case is processed as an expedited complaint.
- Hearings – The Instructions to Answer Notice included a preliminary assessment that hearings will be scheduled. Hearings may be avoided in this proceeding because the Commission can dispose of the Complaint as a matter of law on summary judgment. There are no material facts in dispute.
- Proposed Schedule
  - Prehearing Conference – consistent with Rule 7.2(b), the Commission may forgo the proposed prehearing conference because hearings are unnecessary. Currently, a prehearing conference ("PHC") is scheduled for Friday, June 17, 2016.
  - SDG&E's Motion for Summary Judgment – SDG&E is planning to file this motion soon.
  - Complainant's response to SDG&E's Motion for Summary Judgment – due 15 days following SDG&E's filing of the Motion for Summary Judgment, in accordance with Rule 11.1.
  - SDG&E's reply in support of its Motion for Summary Judgment – due 10 days following Complainant's response.

- ALJ decision on SDG&E's Motion for Summary Judgment – 30 to 60 days following SDG&E's reply.
- In the event that the case moves to hearings:
  - If scheduled as a Regular Complaint:
    - Complainant's Prepared Opening Testimony – 20 days following the ALJ decision on SDG&E's Motion for Summary Judgment.
    - SDG&E's Prepared Reply Testimony – 20 days following Complainant's Prepared Opening Testimony.
    - Hearings – 14 days following SDG&E's Prepared Reply Testimony.
    - Post-hearing-opening briefs – 20 days after hearings.
    - Reply briefs – 14 days following opening briefs.
  - If scheduled as an Expedited Complaint:
    - Hearings – within 30 days after the PHC assuming there is no decision granting SDG&E's Motion for Summary Judgment. Under the Commission's rules, hearings are scheduled within 30 days of the Answer. However, because this matter was not initially categorized as an expedited complaint, the hearings would follow the PHC.
    - Post-hearing-opening briefs – 20 days after hearings.
    - Reply briefs – 14 days following opening briefs.

The foregoing schedules would allow for a Commission decision within 12 months, as set forth in Rule 4.4.

B. SDG&E's Admissions and Denials of Material Allegations

Rule 4.4 requires SDG&E to admit or deny each material allegation in the Complaint. SDG&E is thus required only to address Complainant's material factual allegations. Any factual allegations in the Complaint that are immaterial to the argument made by Complainant may not be addressed below. Legal arguments made by Complainant also may not be addressed below. Thus, any allegation in the Complaint that is not addressed below shall be deemed neither admitted nor denied. SDG&E responds to the paragraphs in the Complaint with the

correspondingly numbered responses below.

1. SDG&E denies Complainant's legal conclusion regarding the requirements of Tariff Rule 12 and SDG&E's compliance with the provisions of that rule.

2. SDG&E denies Complainant's legal argument regarding the requirements in Tariff Rule 12. SDG&E denies that the Commission considers tariff claims framed as a breach of contract. SDG&E denies that it failed to provide Complainant with any notice required by the Commission. Rate refunds are not available to Complainant as a matter of law (Public Utilities Code) because Complainant waited more than three years to challenge its rate. Even if refunds were not legally barred by the Public Utilities Code, they would not be available for the entire period of 2009 through 2014. SDG&E's tariff and Commission decisions limit rate refunds to three years. SDG&E disagrees that attorneys' fees should be awarded to Complainant's counsel.

3. SDG&E neither admits nor denies the content in this paragraph.

4. SDG&E admits the content of this paragraph. The phone number is for residential matters.

5. SDG&E incorporates herein its paragraphs 1-4 above.

6. SDG&E neither admits nor denies the date on which Complainant commenced its business or the form of business under which Complainant has operated. SDG&E admits that Complainant has taken service from SDG&E since at least as early as 1998.

7. SDG&E denies that 600 customers is an approximation of the number of SDG&E's small-business customers that took service from SDG&E in the 2009-2014 time period. "Small Business Customer" is defined in Rule 1 of SDG&E's tariff.

8. SDG&E admits that Complainant was billed on Rate Schedule A-TOU for the period of 2009 to June of 2014. Prior to February of 2000, Complainant was on Rate Schedule A. Complainant was moved from Rate Schedule A to Rate Schedule A-TOU as of February of 2000, at Complainant's request. Rate Schedule A-TOU closed to new customers as of October of 2002. Customers on Rate Schedule A-TOU as of October 2002 were entitled to remain on it. However, after October 2002, new customers could not sign up for Rate Schedule A-TOU and existing customers could not change to that rate. SDG&E admits that there were other customers on Rate Schedule A-TOU during the 2009-2014 time period. Rate Schedule A is now closed, and Complainant has moved to a time-of-use rate.

9. SDG&E admits that Rate Schedule A was SDG&E's "standard rate" for customers that qualified for that rate. "Standard rate" is also known as "default rate." SDG&E admits that Rate Schedule A was a "flat rate" meaning that the rate was the same no matter which time of day energy was consumed by the customer. SDG&E admits that A-TOU was an optional rate, and an alternative to Rate Schedule A, from the time it was adopted in March of 1994, until it closed to new customers in October of 2002. SDG&E admits that Rate Schedule A underwent rate changes since it was adopted in 1977, including during the 2009-2014 time period.

10. Although immaterial to Complainant's legal argument, SDG&E denies Complainant's characterization of Complainant's bills between 2009 and 2013. Complainant's bills ranged from about $596 to $814 during that period. SDG&E admits that the monthly billing figures selectively presented by Complainant are almost correct.

11. SDG&E admits that Complainant's May 14, 2014 bill was for $911.45. Simple math shows that this is $139.41 higher than the May 2010 bill amount presented by Complainant in its paragraph 10.

12. SDG&E admits that Complainant contacted SDG&E on May 17, 2014, to inquire about his electric bill. SDG&E admits that an SDG&E representative met with Complainant on May 22, 2014. The SDG&E representative explained that summer rates are higher than winter rates. SDG&E admits that Rate Schedule A-TOU and Rate Schedule A were discussed and that Complainant asked to move to Rate Schedule A. SDG&E admits that Rate Schedule A was an alternative to Rate Schedule A-TOU for Complainant. SDG&E denies that Complainant was unaware of Rate Schedule A until 2014; Complainant was on Rate Schedule A prior to February of 2000. SDG&E denies that Rate Schedule A had been available for five years; Rate Schedule A was implemented in 1977. SDG&E denies that its representative stated that SDG&E does not provide notice about "alternative rate plans" unless customers first inquire about it; the representative instead explained that SDG&E was not required to provide any special notice to Complainant about Rate Schedule A.

13. SDG&E denies paragraph 13 in its entirety. Complainant was on Rate Schedule A as of 2000. Complainant thus knew about Rate Schedule A. Complainant elected to move from Rate Schedule A to Rate Schedule A-TOU in 2000. Rate Schedule A and Rate Schedule A-TOU have different rate structures; neither rate schedule is inherently "lower." Indeed, there were many months during the 2009-2014 timeframe in which Complainant's bills would have been higher if Complainant had been on Rate Schedule A. Complainant cannot show that it would have chosen Rate Schedule A earlier than it

did in 2014. First, Complainant had free access to SDG&E's tariffs and advice letters during the 2009-2014 time period yet Complainant declined to change its rate. Second, SDG&E sent Complainant many notices of potential rate increases, yet Complainant declined to change its rate. Third, SDG&E sent extra notices to Complainant during the summer of 2013, to welcome a discussion about rates, yet Complainant declined to change its rate. Fourth, neither SDG&E nor Complainant would have been able to know with certainty which rate schedule would produce more favorable bills over time because that answer depended on the precise manner (monthly load profile) by which Complainant used its energy over time. Fifth, it was within Complainant's power to maintain a load profile that would have caused Rate Schedule A-TOU to be more favorable than Rate Schedule A -- not just in certain months (as was the case) -- but for enough months such that Rate Schedule A-TOU would have been more favorable over the 2009-2014 period. SDG&E denies that it failed to make any legally required disclosure or notice to Complainant.

14. SDG&E admits that the Public Utilities Code applies to this matter and agrees that the Commission has supervisory powers over California utilities.

15. SDG&E admits that it must comply with Commission decisions, orders, and rules, etc. SDG&E admits that General Order 96-B applies here, and is central to this matter. SDG&E denies that Tariff Rule 12 supports Complainant's claim.

16. SDG&E's Tariff Rule 12 is published on SDG&E's website and is on file with the Commission. That document speaks for itself. SDG&E denies Complainant's interpretation of Tariff Rule 12.

17. SDG&E's Tariff Rule 8 is published on SDG&E's website and is on file with the Commission. That document speaks for itself.

18. SDG&E denies Complainant's legal interpretation of Tariff Rule 12. That document speaks for itself.

19. SDG&E denies that it failed to provide Complainant any required notice about Rate Schedule A. Complainant alleges that SDG&E had a duty to send a notice to Complainant about Rate Schedule A each and every time Rate Schedule A was modified. SDG&E denies Complainant's legal interpretation of Tariff Rule 12. SDG&E denies that other small business customers may be represented by Complainant in this proceeding, as a matter of law.

20. SDG&E denies Complainant's legal and factual arguments and its legal interpretation of Tariff Rule 12. As set forth above, SDG&E adopted Rate Schedule A in 1977.

21. SDG&E incorporates its responses to paragraphs 1-20 above.

22. SDG&E denies Complainant's legal arguments.

23. SDG&E admits that its tariff has the force and effect of law. SDG&E admits that Complainant has the right to receive any applicable notices required under Tariff Rule 12(c) and to receive service under an applicable rate plan.

24. SDG&E denies that Complainant received no notice about Rate Schedule A until around May 19, 2014.

25. SDG&E denies that other customers are properly addressed in this Complaint as a matter of law. In any event, SDG&E denies that it failed to provide any legally required notice to other customers regarding Rate Schedule A under the theory of Tariff Rule 12 presented by Complainant.

26. SDG&E denies Complainant's legal argument and impermissible attempt to represent other customers.

27. SDG&E denies Complainant's paragraph 27 on the same basis as paragraph 26 above.

28. SDG&E denies Complainant's paragraph 28 on the same basis as paragraphs 13 and 26 above.

29. SDG&E denies paragraph 29 on the same basis as paragraph 26. SDG&E also denies that Complainant would have saved approximately $1200 per year or more if Complainant had been on Rate Schedule A. Applying Complainant's own proposed time period of 2009-July 2014 (which is legally flawed) and using Complainant's load profile for the period, the difference between Rate Schedule A and Rate Schedule A-TOU was approximately $1,000 over the entire proposed 4.5-year period. Complainant's claim is barred by the Public Utilities Code. Even if it was not barred, SDG&E's tariff and Commission precedent would limit any refunds to three years. Applying this three-year limit to Complainant's claim, the difference between the two rate schedules, as applied to Complainant's load profile, results in a difference of only $664.52. And the difference is even less if the time period is adjusted to reflect the letters SDG&E sent to Complainant in the summer of 2013, which alerted Complainant about SDG&E's projected rate increases. These letters invited Complainant to attend rate workshops, to call for a bill analysis, and to learn about ways to save energy, etc. Despite this invitation, Complainant declined to move to Rate Schedule A.

30. SDG&E denies Complainant's paragraph 30 on the same basis as paragraph 26 above.

31. SDG&E denies Complainant's paragraph 31 on the same basis as paragraph 26 above.

32-42. SDG&E denies paragraphs 32-42. The Complainant's case is premised on the argument that SDG&E failed to comply with Tariff Rule 12. In paragraphs 32-42, Complainant merely repackages this argument into breach-of-contract claims. The Public Utilities Code grants the Commission authority to consider complaints involving allegations that a utility has failed to comply with its tariff, but not complaints raising contractual claims. Because these contract claims are based on the same facts and law as Complainant's tariff claim, SDG&E incorporates herein its paragraphs 1-31 above.

43. This matter may be categorized as adjudicatory, but requires no categorization. This matter qualifies as an expedited complaint under Commission Rule 4.5 because of the small amount of money at issue here. Even assuming Complainant's allegations and time period are correct, the difference between Rate Schedule A and Rate Schedule A-TOU, as applied to Complainant's load profile over the January 2009–June 2014 period, is only about $1000, which is well below the threshold for expedited complaints ($5,000). As set forth above, the amount at issue is even less if other time periods are applied. Moreover, the Complaint lacks merit.

44. SDG&E disagrees with Complainant's legal conclusions and attempt to recast in numerous ways a simple issue: (1) whether Tariff Rule 12 required SDG&E to send a notice to Complainant every time SDG&E adjusted its existing Rate Schedule A. The answer is "no." And even if the answer was "yes," the second issue would be: (2) whether Complainant can bear the burden of proving that Complainant would have decided on a prospective basis, prior to 2014, to move to Rate Schedule A.

III. RESPONSE TO PRAYER FOR RELIEF

Complainant seeks rate refunds for the period of 2009-2014 based on the difference between Rate Schedule A and Rate Schedule A-TOU. Complainant's legal arguments have no

merit. Complainant also seeks attorneys' fees. Complainant cannot sustain legal fees for a case that warrants expedited-complaint treatment, under which attorneys do not participate. Further, Complainant has not established that it has incurred legal fees or that legal fees would be warranted before the Commission.

IV. AFFIRMATIVE DEFENSES

First Affirmative Defense

Refunds are barred by the statute of limitations in Section 736 of the Public Utilities Code. Complainant's theory is that SDG&E owed Complainant an obligation to provide notice of Rate Schedule A such that Complainant would have changed rate schedules as of January 2009. Assuming January 2009 is the correct starting point, Complainant was required to bring this action by the beginning of 2012. Complainant failed to do so. The January 2009 date ignores that Complainant chose to move from Rate Schedule A to Rate Schedule A-TOU in 2000. This means that Complainant was legally barred from bringing this action as far back as 2003.

Even if this matter was not barred under Section 736, Complainant would be legally limited to three years' worth of refunds under SDG&E's Tariff Rule 18.

Second Affirmative Defense

Tariff Rule 12 does not apply to the facts presented here.

Third Affirmative Defense

SDG&E complied with Commission General Order 96-B.

Fourth Affirmative Defense

The Commission has exclusive jurisdiction over this matter.

Fifth Affirmative Defense

Public Utilities Code Section 1702 and Commission Rules 4.1 and 4.2 bar Complainant from seeking to complain on behalf of any other customer without authorization from that customer.

Sixth Affirmative Defense

SDG&E has not knowingly or intentionally waived any applicable affirmative defenses, and reserves the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during the course of this proceeding.

WHEREFORE, SDG&E respectfully requests that this matter be dismissed in conjunction with SDG&E's forthcoming Motion for Summary Judgment.

Respectfully submitted this 27th day of May, 2016.

/s/ Stacy Van Goor

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SAN DIEGO GAS & ELECTRIC COMPANY

VERIFICATION

Caroline A. Winn declares the following:

I am an officer of San Diego Gas & Electric Company and am authorized to make this Verification on its behalf. I am informed and believe that the matters stated in the foregoing **ANSWER OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-M) TO COMPLAINT OF BB'S DELI, LLC** are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of May 2016, at San Diego, California.

Caroline A. Winn
Chief Energy Development Officer for SDG&E

SAN DIEGO GAS & ELECTRIC COMPANY